



**Tasmanian Small
Business Council**
Uniting Small Business

Tasmanian Small Business Council Inc
116 Bathurst Street Hobart TAS 7000
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www.tsbc.org.au

20 September 2021

TSBC to The Bill Treasury Laws Amendment 2021 (v2)

The Tasmanian Small Business Council (TSBC) appreciates the opportunity to participate in the consultation session on *The Bill Treasury Laws Amendment (Measures for A Later Sitting) Bill 2021: Unfair Contract Terms*.

The TSBC previous submission raised several points that have been dealt with in the new legislation. There are, however, several matters that we have raised which have not been dealt with in this new legislation and other matters that that could benefit small businesses, farmers and homeowners that rely on Consumer Law.

Since our submission of 11 March 2020 was filed by TSBC, it has been evident that the federal regulators have been under resourced and many of the concerns that were raised by TSBC still have not been administered effectively even though there is appropriate legislation.

While the notion that a small business has access to a court is valid, the practicality in terms of cost and time is unrealistic.

Royal Commissioner Kenneth Hayne made several recommendations that have, for one reason or another, not being implemented by the government in the last 20 months. If those recommendations are not implemented, it is likely that his requirements that *“all Australians have the right to be treated fairly and honestly”* must be considered with the revised legislation in the *Bill Treasury Laws Amendment (Measures for a later sitting) Bill 2021*.



Earlier this year, the Senate published a submission filed by TSBC that demonstrated the extend of unfair loan contracts in the banking sector during the 5 years prior to Kenneth Hayne Royal Commission.

Year	Complaints banks received	Not resolved in five (5) days	Financial Difficulties
2013	897,987	107,760	271,703
2014	1,099,272	99,000	288,139
2015	1,226,093	85,200	296,071
2016	1,189,832	91,630	279,000
2017	1,130,037	101,703	298,569
Total	5,543,221	485,293	286,696 (Avg)

With one million complaints per year, banks not complying with the rule of law meant customers have suffered damages because of contracts being changed by banks and the industry's bodies including the national monitoring members.

We do not suggest that the legislators have failed to protect the public but rather that the application of legislation has not been appropriate. Millions of individuals, small businesses, and farmers cannot apply the legislation because the costs of protecting their rights are outside their reach.



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The ability to make the legislation effective, at little or no additional cost to the Treasury would be to introduce into the legislation terms that made it possible for small businesses including retail customers to raise their complaints with a tribunal or similar body (free of charge), and the complaints or the alleged breaches of law could be referred to magistrate or tribunal member who could decide on whether these matters should be referred to appropriate regulators.

It is believed that such a referral would provide the impetus for the federal regulators to recognise systemic mistakes and seek court consideration on an industry wide basis.

Submitter for consideration.

Geoff Fader
Chair
Tasmanian Small Business Council



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23 September 2021

Please accept this supplementary submission. to the current Unfair Contract Terms consultation.

The various proposals in the amendments are good. They will assist small businesses to achieve some balance in achieving fair contractual agreements with large enterprises such as landlords, franchisors or banks that use Standard Form Agreements.

The proposed legislation will enable a small business to use the court process to obtain a ruling that a proposed clause is unfair.

Unfortunately using the courts fails to provide the level playing field which is the intention of the amendments.

The party offering the contract is large, powerful and has access to skilled staff, money, and high-powered legal services. Generally, they also have a time availability.

The small business has none of these resources and thus remains at a disadvantage even though the proposed contract term may be wrong if independently considered.

It is suggested that provision should be made in the legislative amendments for small businesses to be able to seek an interim determination from the Small Business Ombudsman that would:

1. Place the potentially offending clause on hold
2. Provide a considered recommendation from the Ombudsman to the appropriate regulator
3. Enable the regulator to take the matter to court on even terms with the big business proponent.

It is further suggested that a register of unfair contract terms be maintained by the Small Business and Family Enterprise Ombudsman to enable easy reference by small businesses.

Geoff Fader Chair
Tasmanian Small Business Council